SERVED: October 17, 2000

NTSB Order No. EA-4861

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 17th day of October, 2000

JANE F. GARVEY, Administrator, Federal Aviation Administration, Complainant, v. ARIZONA AVIATION AVIONICS, LLC, Respondent.	Docket SE-16030

OPINION AND ORDER

The respondent has appealed from the oral initial decision Administrative Law Judge Patrick G. Geraghty rendered in this proceeding on September 12, 2000, at the conclusion of an evidentiary hearing.[1] By that decision, the law judge affirmed an emergency order of the Administrator that revoked the respondent's certificate on allegations that it had violated section 43.12(a)(1) of the Federal Aviation Regulations ("FAR"),

[1]An excerpt from the hearing transcript containing the initial decision is attached.

14 C.F.R. Part 43.[2] For the reasons discussed below, the appeal will be denied.[3]

The Administrator's August 18, 2000 Amended Emergency Order of Revocation alleges, among other things, the following facts and circumstances concerning the respondent:

> 1. ARIZONA AVIATION AVIONICS, LCC ("AAA") now, and at all times mentioned herein was, the holder of Air Agency Certificate No. ZA7R382N.
>
> 2. From at least December 17, 1999, through January 1, 2000, America West Airlines, Inc., a certificated air carrier conducting operations under Part 121 of the Federal Aviation Regulations, submitted aircraft to AAA for performance of maintenance on passenger entertainment systems.
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> 3. From at least December 17, 1999, AAA knew it was not rated to perform maintenance on said entertainment systems, and advised the FAA that it would have the work accomplished by appropriately rated FAA certificated mechanics.
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> 4. On or about December 17, 1999, John Wade, an owner of AAA, told Neal Davis, a certificated repairman for AAA, to use Mr. Wade's mechanic certificate number and to sign his (Wade's) name to documents reflecting performance of maintenance on said passenger entertainment systems for

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[2]FAR section 43.12(a)(1) provides as follows:

> **§ 43.12 Maintenance records: Falsification, reproduction, or alteration.**
>
> (a) No person may make or cause to be made:
> (1) Any fraudulent or intentionally false entry in any record, or report that is required to be made, kept, or used to show compliance with any requirement under this part....

[3]The Administrator filed a reply brief opposing the appeal. She subsequently filed a motion to strike a response to her reply that the respondent had submitted without first obtaining Board approval or providing a showing of good cause for a supplemental brief, as required by Rule 48(e) of the Board's Rules of Practice, 49 C.F.R. section 821.48(e). The motion to strike is hereby granted. Respondent's subsequent motion to cure its prior, purposeful failure to follow proper procedure in the first instance, which it suggests was justified in the interest of saving time, is denied.

America West Airlines, Inc.

5. In accordance with Mr. Wade's instructions, during the period from December 17, 1999, through January 1, 2000, Mr. Davis signed Mr. Wade's name and certificate number on at least thirteen (13) maintenance entries for said entertainment systems, when Wade had neither performed nor supervised the performance of said maintenance.

6. Each of said maintenance entries were required by Part 43 of the Federal Aviation Regulations to document proper performance of maintenance on said aircraft passenger entertainment systems.

7. Each of said maintenance entries were made to document performance of work on behalf of AAA.

8. Gerald P. Violette, and William Blair, Co-Owners of and certificated repairman [sic] for AAA, were present on December 17, 1999, heard Mr. Wade's instructions to Mr. Davis as alleged in paragraph 4 above, and did not object.

9. On or about January 14, 2000, during questioning from an FAA inspector regarding said maintenance entries, Mr. Violette told the inspector that Mr. Violette believed Wade was performing said maintenance at night.

10. Mr. Violette made the statement to the FAA inspector as referenced in paragraph 9, knowing it was false.

11. By at least January 14, 2000, Mr. Davis told Mr. Violette and Mr. Blair that he (Davis) had been making entries using Mr. Wade's name and certificate number pursuant to Mr. Wade's instructions.

12. On January 22, 2000, during questioning from FAA inspectors regarding said maintenance entries, Mr. Blair told the inspectors that he had no knowledge of Mr. Davis using Mr. Wade's name and certificate number in making said entries.

13. Mr. Blair made the statement to the FAA inspectors as referenced in paragraph 12, knowing it was false.

The law judge essentially found that the Administrator had met her evidentiary burden with respect to these allegations and affirmed the revocation of the respondent's repair station authority. Respondent does not on appeal contest the law judge's

conclusion that material falsifications were made in maintenance records by one of its repairmen at the direction of one of its three owners. Nor does respondent attempt to demonstrate error in the law judge's findings as to witness credibility. Rather, respondent's primary argument is that the law judge erred in concluding that respondent is responsible for the falsifications because the evidence shows that two of the company's three managing owners did not learn of them until after they had occurred. We find no merit in this or in any other of respondent's contentions here.[4]

The record establishes that Mr. Violette and Mr. Blair attended a meeting at which, among various topics of discussion, Mr. Wade proposed to have Neal Davis, a supervisory employee of respondent, use Wade's name and mechanic certificate number to

[4]We find nothing improper in the fact that the law judge allowed the Administrator to "lodge" in the record of this proceeding a copy of the June 6, 2000 hearing transcript in an enforcement proceeding involving the emergency revocation of Mr. Wade's mechanic certificate. The findings and conclusions of the law judge in this proceeding do not in any way appear to be based on evidence in the earlier proceeding; indeed, it does not appear that the law judge relied on the transcript for any purpose.

We are also not persuaded that the law judge should have struck from the complaint as "irrelevant and scandalous" those allegations (i.e., paragraphs 9 through 13) that relate to oral statements made by two management officials of respondent, which they do not here deny making, when questioned during an FAA investigation of the matter which led to the charge in this action. We agree with the Administrator that these allegations were relevant to the issue of whether the conduct of respondent's principals should be treated as actions of respondent, and the law judge found the allegations amply established by the evidence introduced by the Administrator in support of them.

sign off maintenance Wade had neither performed nor inspected.[5] They voiced no objection to the proposal. We believe that their failure to disassociate themselves in any way from the improper suggestion, which they now claim they did not take seriously, supports a finding that they, along with Mr. Wade, caused, within the meaning of FAR section 43.12, the falsifications his proposal contemplated, without regard to their subsequent claims as to their actual intent at the time.[6]

Mr. Violette and Mr. Blair knew or should have known, notwithstanding what they now say was their private reaction, that not just their employee, Mr. Davis, but also their partner, Mr. Wade, could reasonably view their failure to speak up against the proposal as some measure of agreement, if not a ratification.[7] Mr. Violette and Mr. Blair were not, after all, disinterested observers; they were co-owners directly involved in the day-to-day management of respondent who presumptively had the

[5]This presumably would have been a temporary procedure, to be abandoned after the respondent received authority, for which it had a pending request, to do the entertainment system work under its repair station certificate.

[6]Our judgment in this connection should not be understood to reflect any conclusion that it would not have been sufficient, for purposes of finding respondent answerable for the charged violation, if Mr. Wade alone were deemed to have caused the falsifications.

[7]It is clear from Mr. Davis' testimony that he construed Mr. Violette's and Mr. Blair's silence in the face of the proposal to constitute at least a tacit approval of Mr. Wade's suggestion: "By their not saying anything, my assumption was this is...to use the A and P number was an appropriate action....I didn't even stop to think that they might have taken it some other way" (Transcript at 88).

authority (and, we believe, obligation) to say no, we are not in favor of and will not condone any improper maintenance signoffs. Instead, they said nothing. In these circumstances, we have no hesitancy in holding that Mr. Violette and Mr. Blair contributed to the commission of the charged violation and in affirming the law judge's determination that responsibility for falsifications that resulted from a meeting of the respondent's three owners should be imputed to the respondent.[8]

We find no abuse of discretion in the law judge's refusal to allow respondent to introduce evidence to demonstrate that after the FAA's investigation was underway it subsequently took action to ensure its compliance with regulatory requirements.[9] Evidence of corrective measures was not relevant to a decision on the

[8]It is not entirely clear from the initial decision whether the law judge credited Mr. Violette's and Mr. Blair's insistence that they did not intend their lack of overt objection to Mr. Wade's proposal as an endorsement of it. He clearly did believe that they had been mendacious in subsequent conversations with the FAA inspector looking into the matter, a circumstance he factored into his assessment of their claimed possession of the care, judgment and responsibility required of a certificate holder.

[9]Similarly, we find no abuse in the law judge's sustaining of objections to respondent's counsel's efforts to introduce, without proper foundation, evidence of Mr. Blair's character or reputation for truth and veracity. Moreover, we question the relevance of the line of questioning, for while Mr. Blair's personal integrity may have been impugned by certain allegations and his conduct had a bearing on the respondent's accountability, this proceeding did not involve any charges against him or any claim that he personally falsified any record. Indeed, even if he had been charged, such evidence would not likely be allowed under the Federal Rules of Evidence, which generally forbids the admission of "[e]vidence of a person's character or a trait of his character...for the purpose of proving that he acted in conformity therewith on a particular occasion...." (FRE Rule 404).

factual allegations in the complaint, however pertinent they may or should be to the Administrator either in assessing the proper sanction to pursue for suspected FAR violations or in determining whether to re-certificate an applicant who has had a certificate taken away.[10] At the same time, the only allegedly "corrective" measures respondent, in a proffer of evidence, referenced were the departure of Mr. Wade from the company in February, 2000, and the removal of Mr. Davis from line maintenance. We do not believe respondent's defense, or the law judge's ability to determine the appropriate sanction in the action, was adversely affected by the absence of evidence to establish these essentially uncontroverted circumstances.

Finally, with respect to sanction, we share the law judge's conclusion that revocation is appropriate. The respondent's three co-owners were clearly shown to lack the care, judgment and responsibility that would be expected of them as individual certificate holders. Mr. Wade in effect recommended that a supervisory employee commit maintenance record fraud, and Mr.

[10]Respondent also argues that it should have been, but was not, permitted to explore whether the FAA's investigation complied with its obligation in FAA Order 2105.5 to consider whether evidence of corrective measures dictates that a sanction other than an emergency revocation should have been pursued. In the first place, it is not within the Board's adjudicative authority to determine whether the FAA investigation was flawed. In the second place, the Administrator's decision to pursue this case pursuant to her emergency authority had been upheld by the Board's Chief Administrative Law Judge on August 25, 2000, more than two weeks before the hearing. Respondent is not entitled to further Board review of that decision, since the "law judge's ruling on...[a petition for review of an emergency determination is] final, and is not appealable to the Board." See Section 821.54(f) of the Board's Rules of Practice, 49 C.F.R. Part 821,

Violette and Mr. Blair prevaricated when questioned about the falsifications in an official investigation. Because these three individuals controlled respondent's operations, it is reasonable to conclude that respondent likewise lacks qualification to hold a certificate.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied; and

2. The initial decision and the emergency order of revocation are affirmed.

HALL, Chairman, HAMMERSCHMIDT, GOGLIA, BLACK, and CARMODY, Members of the Board, concurred in the above opinion and order.

(..continued)
65 F.R. 42640 (July 11, 2000).